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TAGS: ECON EFIN EINV ETRD FAO TS
SUBJECT: NEW FRANCHISE LAW CREATES A POTENTIAL OPENING IN
TUNISIA

REF: 07 TUNIS 581

Classified By: Charge d'Affaires Marc Desjardins for reasons 1.4 (b) an
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Summary

¶1. (SBU) President Ben Ali signed a law August 12 regulating commercial distribution, which included a much-anticipated provision on franchising. Until now, Tunisia has not provided adequate protection for international franchises, which discouraged significant potential investment. The Tunis Chamber of Commerce and Industry, which will hold Tunisia's first-ever franchise show in December, told EconOff the law would finally give international franchises the protection they needed to operate in Tunisia. However, once the law was actually published, it was apparent that it would not specifically protect international franchises nor would it guarantee hard currency repatriation of royalties. At the same time, even though the law is not perfect, it does specifically allow franchises to operate in Tunisia (before approval was granted on a case-by-case basis), and signals that the GOT may now finally be warming to foreign franchises as an avenue for attracting investment and job creation. End Summary.

The New Franchise Law

¶2. (U) On August 18, the GOT published the new law regulating commercial distribution, which includes provisions on franchising. Until the passage of this legislation, international commercial franchises did not have adequate protection in Tunisia. The new law allows for creation of franchises without specific GOT approval, essentially making franchises equal to any other business that legally operates in Tunisia. The law also does not outline regulations specific to international franchises. Repatriation of royalties is not guaranteed under the current legal regime (Note: repatriation of hard currency is especially difficult due to the non-convertibility of the Tunisian Dinar.) Unfortunately, the new law does not address this issue and only mentions royalties within the definition of the franchising contract. In essence, the law allows for creation of franchises but makes no special provisions as to their operation. We also do not yet have a timeline for implementation of the new law.

Mixed History of Franchises in Tunisia

¶3. (C) A few foreign franchises have existed in Tunisia for some time. French grocery giants Carrefour, and more recently Geant, were approved to operate in Tunisia after the GOT was able to gauge their effects on the economy. These are doing extremely well. Some big-name American franchises, however, have not fared as well. In 2007, Pizza Hut invested in Tunisia but decided to leave after influential businessmen close to the GOT pressured the company to partner with them. When they refused, the GOT conducted a health inspection and failed Pizza Hut's only restaurant. McDonald's also suffered a similar fate -- after signing a contract with local businessman Hichem Bouchamaoui, GOT-affiliated businessmen got word and pressured Bouchamaoui to let them in on the deal. McDonald's decided to hold off on the investment. The Commercial Section receives periodic expressions of interest by U.S. franchises in many sectors - food services, office supplies, and realty services - but once they learn of the lack of adequate legal protections, the investors turn away.

First-Ever Tunisian Franchise Show

¶4. (C) The Tunis Chamber of Commerce and Industry (CCI Tunis) is planning the first-ever Tunisian franchise show in December, called Tunisie-Med Franchise. The group, which is affiliated with the Ministry of Commerce, actively courted the Embassy to encourage participation of U.S. companies in

this event. On August 14, EconOff met with the Treasurer of CCI Tunis, Nachaet Azzouz, who promised the law would give all the protections necessary for international franchises to operate (Note: the meeting took place four days before the law was published.) When asked which sectors were strategic for the GOT, he said it didn't matter, as long as the franchise created jobs.

A Change of Heart for the GOT?

¶5. (C) The Embassy has been pushing the GOT to adopt franchising legislation for some time (Ref A). We raised the issue in the TIFA council meetings of 2008, through the Commercial Law Development Program, and the Ambassador pressed during a meeting with the Ministry of Development and International Cooperation in July 2009. Other large investors, such as the Saudi group Fawaz Al Hokair, pushed the GOT to adopt franchising legislation in 2008 back when the GCC group Sama Dubai announced their Mediterranean Gate project. To date, Fawaz Al Hokair has not invested.

¶6. (C) After languishing in draft status for over two years, the passage of this law could indicate a change of heart in the GOT. Judging by Azzouz' comments, the GOT may now be viewing franchises as an avenue to job creation. Mega-projects, such as the launch of construction of Bukhatir Group's Tunis Sports City, could have catalyzed the legislation. Additionally, an FDI decrease of over 28 percent in 2009 has likely pushed the GOT to enact legislation that could encourage more direct investment in the future. The GOT might want to signal to the EU that the domestic market is opening up, showing commitment to deeper trade relations.

Comment

¶7. (C) Although the new legislation is not perfect, its passage represents a potential opening for U.S. investment. Franchises are now better defined and codified by Tunisian law. This development may also signal a political

environment whereby interference with a franchise investment becomes more costly and less tolerated. Although the most salient issue - royalty repatriation - is not specifically addressed and GOT influentials may still target high-profile franchises, we see the law as a step forward. We will use this opportunity to engage with the GOT on possibly amending or improving the law, and also encourage U.S. businesses to consider participation in the upcoming franchise show, with an eye to potential investment in Tunisia. End Comment.
DESJARDINS